

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO**

**UNITED STATES OF AMERICA,**

**Plaintiff,**

**v.**

**No. CR 21-0890 RB**

**ANDRES GERARDO AYALA-  
BOJORQUEZ,**

**Defendant.**

**MEMORANDUM OPINION AND ORDER**

**THIS MATTER** comes before the Court on Ayala-Bojorquez's Motion in Limine to Exclude Evidence that Was Untimely Disclosed. (Doc. 47.) Ayala-Bojorquez moves to exclude photographs the Government provided on December 3, 2021, and an audio recording from a 1998 hearing that the Government disclosed on December 7, 2021. (*See id.* at 2.)

In its July 1, 2021 Discovery Order, the Court ordered the Government to allow the defendant to inspect and copy, in relevant part, any photographs or other tangible objects that were "within the possession, custody or control of the government, and which are material to the preparation of the defendant's defense or are intended for use by the government as evidence in chief at the trial, or were obtained from or belong to the defendant." (Doc. 15 at 3.) Ayala-Bojorquez argues that the discovery is untimely under the terms of the Discovery Order. (Doc. 47 at 2.) The Government asserts that the photographs simply show the desert near the location where Border Patrol agents apprehended Ayala-Bojorquez and "did not exist at the time of" the Discovery Order. (Doc. 49 at 1–2.) Regardless whether the photographs existed in July, the parties have known since at least early November that this matter was moving toward trial. The

Government has not offered any valid reason why it could not have procured the photographs earlier. As a result, the Court will grant the motion to exclude the photographs.

The Government also argues that it “will not seek to introduce the 1998 audio recording in its case-in-chief.” (Doc. 49 at 1.) It states that it reserves the right to use the recording “as rebuttal evidence or . . . for some other proper purpose . . .” (*Id.*) The Court will grant the motion in limine to exclude the audio recording at this time. If necessary, the Government may move to introduce the recording at an appropriate time.

**THEREFORE,**

**IT IS ORDERED** that the Motion in Limine to Exclude Evidence that Was Untimely Disclosed (Doc. 47) is **GRANTED**.

  
ROBERT C. BRACK  
SENIOR U.S. DISTRICT JUDGE